

U.S. DEPARTMENT OF LABOR
Employment and Training Administration
Washington, D.C. 20210

REPORT ON STATE LEGISLATION

REPORT NO. 10
December 2013

CALIFORNIA	AB 908 (CH 553)	ENACTED October 4, 2013 EFFECTIVE January 1, 2014
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Administration

Requires the Director of the Employment Development Department to permit the use of any information in his/her possession to provide any peace officer designated by the Investigations Division of the Department of Motor Vehicles who is requesting this information as part of an investigation into identity theft, counterfeiting, document fraud, or consumer fraud, and there is reasonable suspicion that the crime is a felony and that the information would lead to relevant evidence. Information shall be provided to the extent permitted by Federal law and regulations and to the extent the information is available and accessible within existing department records.

CALIFORNIA	AB1392 (CH 141)	ENACTED August 26, 2013 EFFECTIVE July 1, 2014, except as indicated
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Extensions and Special Programs

For work sharing plans effective before July 1, 2014, existing regulations for the work sharing program were enacted into law and provide that:

- An individual is unemployed in any week that the individual works less than the normal weekly hours of work (40 hours or less) and has a reduction in wages of at least 10 percent as a result of an approved plan to avoid a layoff;
- The approved plan expires after 6 months and must include at least 2 employees and not less than 10 percent of the employer's regular permanent workforce or at least 1 week in a two-consecutive week period;
- The weekly shared work unemployment compensation benefit shall be an amount equal to the percentage reduction of an individual's wages multiplied by the individual's weekly benefit amount, increased to the next higher multiple of one dollar if not a multiple of one dollar;
- No benefits shall be payable on an extended benefit claim;
- Benefits received shall be reduced by any compensation received for services provided, except compensation by the regular employer under a work sharing plan (a labor organization may be considered a "regular employer" pursuant to an approved plan);

- An individual shall not be disqualified for unemployment compensation if the individual has not been absent from work without approval and has accepted all work during the hours scheduled off from the regular employer;
- The employer must agree in writing to voluntarily participate in the work sharing plan, with the written approval of the collective bargaining unit; and
- The Director of the Employment Development Department may terminate a shared work plan for good cause.

For work sharing plans effective on or after July 1, 2014, establishes certain definitions and changes the requirements for approval of a work sharing plan to require that the plan include: the affected unit and the percentage of employees covered by the plan (including the number of full- or part-time employees in the unit), the name and social security number for each participating employee, and the employer's unemployment tax account number; how employees will be notified about the plan and, if employees cannot be notified in advance, an explanation of why this was not feasible; the usual weekly hours of work for employees; and the specific percentages by which their hours will be reduced (not less than 10 percent or more than 60 percent).

Requires employers participating in a work sharing plan to certify: that health and retirement benefits will continue to be provided under the same terms and conditions as though the usual weekly hours of work had not been reduced or to the same extent as non-participating employees; that any reduction in benefits scheduled to occur are applied equally to all employees; that the aggregate reduction in work hours is in lieu of layoffs and provide an estimate of the number of workers who would have been laid off without the plan; and that implementation of the plan is consistent with the employer's obligations under Federal and State laws. The employer must agree to furnish reports and allow access to all records necessary to approve or disapprove the plan or to monitor and evaluate an approved plan.

Requires the Director to approve or disapprove a work sharing plan no later than 10 working days from the date of receipt. Provides that an employer may submit a request for review within 20 days of disapproval or submit a different plan for approval. All review decisions are final.

Provides that the maximum length of a work sharing plan is 12 months. An employer may terminate a work sharing plan upon written notice, and the Director may revoke approval of a plan for good cause. Modifications to the plan may be requested (with no extension of the original expiration date) in writing. A decision must be made regarding the modification no later than 10 working days after receipt.

Provides that an employee is eligible to receive work sharing compensation if he/she: is a member of an affected unit under an approved plan; is available for the usual hours of work, which may include participation in employer-sponsored training or training funded under the Workforce Investment Act; has not been absent from work without approval; and has accepted all work made available by the regular employer.

The work sharing compensation shall be the regular weekly benefit amount multiplied by the percentage reduction in the individual's usual weekly hours of work rounded to the next higher

dollar. Compensation (regular and work sharing combined) may not exceed the maximum benefit entitlement established for the benefit year and may not be paid for more than 52 weeks.

If the work sharing employer does not provide any work during a week, an employee may receive regular compensation. The employee may receive partial unemployment compensation if he/she works for another employer in any week when no work is provided by the work sharing employer. An employee is not eligible for partial unemployment if work is provided by the work sharing employer.

Individuals who have exhausted regular and work sharing compensation shall be eligible to receive extended benefits.

Financing

For work sharing plans effective on or after July 1, 2014, work sharing compensation shall be charged to the employer's experience rating account.

COLORADO

HB 1124
(CH 97)

ENACTED April 4, 2013
EFFECTIVE August 7, 2013

Financing

Provides that, notwithstanding any other provision of law, an employer's account shall be charged for an improper payment from the unemployment compensation fund if:

- (i) the payment was made because the employer or an agent of the employer was at fault for failing to respond timely or adequately to the request for information relating to the claim for compensation; and
- (ii) the employer or agent has established a pattern of failing to respond timely or adequately to such requests.

Provides that rules shall be promulgated to specify what factors and frequency constitute a pattern of failing to respond timely or adequately.

Requires that 23 percent of the 65 percent (14.95 percent) monetary penalty on the amount of the fraudulent overpayment be deposited into the State's unemployment revenue fund.

Overpayments

Provides that any person who receives an overpayment because of his or her false representation or willful failure to disclose a material fact shall pay a 65 percent (previously, 50 percent) monetary penalty of the total amount of the overpayment.

(The above provisions apply to improper payments from the unemployment compensation fund on or after August 7, 2013.)

Extensions and Special Programs

Amends the voluntary work share program provisions as follows:

- Repeals the provision providing that if the work share program causes insolvency of the unemployment insurance cash fund to accelerate, the work share provisions shall be repealed effective July 1, 2013. Repeals all language providing that the work share program shall terminate on July 1, 2013, thereby extending the program to continue without a sunset date.
- Provides that an employer must submit a work share plan, and the Director may approve the plan if the plan:
 - applies to at least 2 (previously, 10 percent) of the employees in the affected unit;
 - includes a description of how the plan complies with Section 3301 of the Federal Unemployment Tax Act;
 - includes an explanation of how employees will be notified of the plan in advance, if notification is feasible, or an explanation of why advance notice is not feasible;
 - includes an estimate of the number of employees who would be laid off if the employer did not participate in the work share program; and
 - includes certification by the employer that the terms of the written plan and implementation of the plan are consistent with employer obligations pursuant to Federal and state laws.
- Repeals the provision providing that the Director may approve a work share plan if the plan includes a strategy that restores the total number of work hours to each participating employee to the amount of hours worked prior to participation in the program.
- Provides that the Director shall not approve a work share plan unless the employer:
 - certifies that the implementation of a shared work plan and resulting reduction in work hours is in lieu of layoffs (previously, temporary layoffs) that would affect at least 2 (previously, 10 percent) of the employees in the affected unit and that would result in an equivalent reduction in work hours.
 - agrees that no employee participating in the work share program shall receive, in the aggregate, more than 26 (previously, 18) weeks of benefits.
- Provides that an eligible employee may participate in training, including employer-sponsored training and training funded through Section 2801 of the Federal Workforce Investment Act of 1998, to enhance job skills if the training program has been approved by the Department of Labor and Employment.

- Provides that, if reimbursement to the state for unemployment compensation is not available pursuant to the Federal Layoff Prevention Act of 2012, unemployment compensation benefits paid to an employee shall be charged to the account of the employer participating in the work share plan in the same manner as regular benefits.

GEORGIA Rule 6050
(CH 300)

ADOPTED July 16, 2013
EFFECTIVE October 22, 2013

Financing

Provides that an employer shall be charged for all benefits paid as a consequence of the employer's failure to provide a timely written response to a claim for unemployment insurance benefits, regardless of whether the previous determination to pay benefits is later reversed on appeal or if an overpayment is established.

Provides that the account of employers electing reimbursable status shall be charged and may not be relieved of charges, regardless of whether a determination to pay benefits is later reversed on appeal or if an overpayment is established, whenever an employer or an agent for that employer was at fault, without substantial good cause, for failing to respond timely or adequately to the request for information relating to the claim for benefits that was subsequently improperly paid, and the employer or an agent for the employer has failed to timely or adequately respond during the previous 12 calendar months to any requested reports with respect to 3 individual claims established.

Provides that the restriction on relief from charges for the claim shall be imposed for each week of State or Federal unemployment benefits that is an overpayment until the claimant is no longer eligible for unemployment benefits and no additional benefit payments are issued to the claimant.

Provides that the limitations on charges to employers regarding wages paid, waiver of overpayments, and benefits paid for unemployment that is directly caused by a presidentially declared natural disaster shall not apply to provide relief from charges restricted under these provisions.

Provides that "substantial good cause" for failure to respond timely or adequately to the request for information relating to a claim for benefits shall require a showing of extenuating circumstances that prevented the timely or adequate filing by the employer or the employer's agent, as appropriate, and that such extenuating circumstances were beyond the employer's or the employer's agent's control.

Provides that the statutory "cap" on benefit charges provided in O.C.G.A. §34-8-157 shall not apply to Extended Benefits paid under O.C.G.A. §34-8-197.

Provides that the mandatory penalty of 15 percent of the overpayment shall be deposited into the Unemployment Trust Fund of this State, pending conforming legislation by the General Assembly.

Nonmonetary Eligibility

Provides that benefits based upon educational service in employment defined in subsections (h) and (i) of Code Section 34-8-35 and performed for an educational employer, including service in employment for any governmental or non-profit educational institution or any educational service agency, are subject to the benefit payment limitations described in OCGA Section 34-8-196(a) whenever the conditions in subparagraphs (a)(1), (a)(2), or (a)(3) of that Code Section apply with respect to such service.

Overpayments

Provides that an individual shall be required to repay an overpayment of unemployment insurance benefits unless a timely application for waiver is filed, such repayment is determined to be inequitable under this rule, and fault is not found to be attributable to that individual. Such determination shall not be appealable.

Provides that a waiver of an unemployment insurance overpayment may not be granted if the request for such waiver is filed later than 15 calendar days following the release date of the notice of overpayment. Provided, however, that such time limitation may be extended upon a showing of extenuating circumstances that prevented the filing of a timely waiver request by the claimant and such circumstances were beyond the claimant's control.

Provides that a waiver of an unemployment insurance overpayment may not be granted to any individual who has been expressly determined to have brought about such overpayment by the presentation of false or misleading statements or representations, whether or not such action has been determined fraudulent, when such individual could have or should have known such information was false or misleading.

Provides that a waiver of an unemployment insurance overpayment may be granted to an individual only if:

1. a timely application for waiver is filed;
2. fault is not attributable to the individual;
3. the individual provides, at the time of the individual's request for a waiver, satisfactory evidence of circumstances showing repayment would genuinely work a financial hardship on the individual; and
4. the individual provides, at the time of the individual's request for a waiver, satisfactory evidence that he or she has no reasonable prospect of future employment nor ability to repay the overpayment in the future, due to age, disability, or other good cause.

Provides that financial hardship exists if recovery of the overpayment would result directly in the individual's loss of or inability to obtain the minimal necessities of food, medicine, and shelter for a substantial period of time and such circumstances may be expected to endure for the foreseeable future.

Provides that a waiver of an unemployment insurance overpayment may be issued in whole or in part upon the finding of a court of law, having proper subject matter jurisdiction, which rules that error existed in the information utilized to establish such overpayment, whether or not such overpayment was determined to be fraudulent in nature. Additionally, if a court finds repayment of an overpayment should be waived by virtue of discharge in bankruptcy granted under the provisions of Chapter 7 or Chapter 13 of the Bankruptcy Code, waiver will be granted.

Provides that the monetary penalty assessed against individuals who commit fraud in connection with state or Federal unemployment insurance benefits paid from this state's Unemployment Trust Fund is increased from 10 percent to a mandatory penalty of 15 percent of the overpayment, applicable to all Federal and State unemployment fraud overpayments, pending conforming legislation by the General Assembly. Such penalty amounts may not be waived by the Department or the Commissioner, except pursuant to an order of a court of competent jurisdiction so ruling. (Effective October 22, 2013.)

IDAHO

HB 44
(CH 103)

ENACTED March 21, 2013
EFFECTIVE March 21, 2013,
or as noted

Administration

Defines "rehire" to mean to reemploy an individual who was laid off, separated, furloughed, granted leave without pay, or terminated from employment at least 60 consecutive days (under prior law, 12 months) prior to reemployment. (Effective on and after July 1, 2013.)

Financing

Provides that, notwithstanding any other provision of law, an experience rated employer's account may not be relieved of charges, and a reimbursing employer may not be relieved of liability, for benefits paid to a claimant that are subsequently determined to be overpaid if the covered employer or an agent of the covered employer is at fault for failing to respond timely or adequately to the written or electronic request for information relating to a claim for unemployment insurance benefits, and the covered employer or agent of the covered employer has established a pattern of failing to timely or adequately respond.

Provides that a response is timely if the requested information is received within 7 days from the date the request is mailed or sent electronically. This time limit may be extended upon a written request.

Provides that a response is adequate if it provides sufficient facts to make the correct determination. A response will not be considered inadequate if the Department failed to ask for all necessary information.

Provides that a pattern of failure to respond timely or adequately means at least 2 or more instances of such behavior. If a covered employer uses a third party agent to respond on its

behalf, then a pattern may be established based upon that agent's behavior with respect to the individual client or covered employer that agent represents.

Provides that a covered employer shall be notified in writing of the Department's determination, which shall become final unless an appeal is filed within 14 days after notice.

(The above provisions prohibiting relief from liability are effective on and after October 22, 2013.)

Provides that the amounts collected on the first 15 percent of a civil penalty assessed on fraudulent overpayments shall be paid into the employment security fund, and any additional amounts collected shall be paid into the employment security administrative and reimbursement fund. (Effective on and after October 22, 2013.)

Overpayments

Provides that the Director may, in his sole discretion, also compromise any or all of a civil penalty in excess of the amount required to be paid into the employment security fund assessed when the Director finds it is in the best interest of the Department. (Effective on and after October 22, 2013.)

MASSACHUSETTS

HB 3707
(CH 118)

ENACTED October 29, 2013
EFFECTIVE October 29, 2013,
or as noted

Financing

Provides that if, after providing written or electronic notice to the employer, a payment of benefits was made because the employing unit, or an agent of the employing unit, was at fault for failing to respond timely or adequately to any request for information relating to the claim for benefits, then the employing unit shall not be relieved of charges on account of any such payment of benefits, and shall not be relieved from reimbursing the fund on account of any such payment of benefits. A response shall be considered inadequate if it fails to provide sufficient facts to make the proper determination regarding a claim for benefits. A response shall not be considered inadequate if the Department of Employment and Training fails to ask for all necessary information, except in any case where there has been a failure to respond. (Effective on and after July 1, 2013.)

Provides that except as otherwise provided, recovery of the 15 percent penalty on fraudulent overpayments shall not be waived. The 15 percent assessment on fraudulent overpayments shall be deposited immediately in the Unemployment Compensation Fund.

Overpayments

Provides that, if an erroneous payment from the Unemployment Compensation Fund was made to an individual due to the individual's misrepresentation of a material fact or failure to disclose a material fact that the individual knew, or reasonably should have known was material, the

individual shall be assessed a penalty equal to 15 percent of the amount of the erroneous payment.

MICHIGAN

HB 4949
(P.A. 147)

ENACTED and EFFECTIVE October 29, 2013

Overpayments

Provides that, in addition to any other applicable interest and penalties for fraud, a person shall have his or her rights to benefits for the benefit year in which the fraudulent act occurred canceled as of the date the claimant made the false statement or misrepresentation or concealed material information, and wages used to establish that benefit year shall not be used to establish another benefit year. A chargeable employer may protest a claim filed after October 1, 2014, to establish a successive benefit year, if there was an agency determination, court decision, or administrative tribunal finding that the claimant made a false statement, made a misrepresentation, or concealed material information related to his/her report of earnings for a preceding benefit year claim. If a protest is made, any unreported earnings from the preceding benefit year that were falsely stated, misrepresented, or concealed shall not be used to establish a benefit year for a successive claim. (Prior law provided: (1) that the person shall have all of his/her uncharged credit weeks with respect to the benefit year in which the act occurred canceled as of the date the agency receives notice of, or initiates investigation of the possible false statement, misrepresentation, or concealment of material information, whichever date is earlier; and (2) before receiving benefits in a benefit year established within 2 years after cancelation of uncharged credit weeks, the individual, in addition to making the restitution of benefits may be liable for an additional amount as determined by the agency, which may be paid in cash, deduction from benefits, or deduction for a tax refund.)

Provides that the individual is liable for any fee the Federal government imposes with respect to instituting a deduction from a Federal tax refund.

Defines “contrary to equity and good conscience” to mean any of the following: (i) the claimant provided incorrect wage information without the intent to misrepresent, and the employer provided either no wage information upon request or provided inaccurate wage information that resulted in the overpayment; (ii) the claimant’s disposable household income, exclusive of social welfare benefits, is at or below the annual update of the poverty guidelines most recently published in the Federal Register by the U.S. Department of Health and Human Services, and the claimant has applied for a waiver. A waiver granted under the specified conditions applies from the date the application is filed; or (iii) the improper payments resulted from an administrative or clerical error by the unemployment agency. A requirement to repay benefits as the result of a change in a judgment at any level of administrative adjudication or court decision concerning the facts or application of law to a claim adjudication is not an administrative or clerical error.

NEVADA

SB 36
(CH 369)

ENACTED and EFFECTIVE June 2, 2013

Financing

Provides that the recovery of the 15 percent penalty imposed on the amount of fraudulent benefits received must be deposited in the Unemployment Trust Fund.

Provides that the recovery of the additional 5 percent to 35 percent penalties that may be imposed on fraudulent benefits received must be deposited in the Employment Security Fund and may be used for any purpose that furthers the integrity of the unemployment compensation system.

Provides that any liability for unpaid contributions, interest, or forfeit attributable to the transferred trade or business must be transferred to the successor employer. The percentage of liability transferred must be the same as the percentage of the experience record transferred.

Provides that, in the case of a business transfer of assets other than a sale, if the contributions, interest, and forfeits are not paid within the 10-day period, the transferee is personally liable for the payment of the contributions, interest, and forfeits accrued and unpaid on account of the operation of the business by the former owner.

Provides that, except for the required deposit of the 15 percent penalty imposed on the amount of fraudulent benefits received into the Unemployment Trust Fund, all interest and forfeits collected on the income withheld from the person's wages must be paid into the Employment Security Fund; any refunds of interest and forfeit collected must be made only from the Employment Security Fund.

Provides that, if an employer who is given notice of a claim for benefits fails to submit timely all known relevant facts that may affect the claimant's rights to benefits, the employer's record for experience rating is not entitled to be relieved of the amount of any benefits, paid to the claimant as a result of such failure, that were charged against the employer's record. (Applies to a claim for benefits paid on and after October 21, 2013.)

Overpayments

Provides that, if the Administrator obtains a judgment against a person for: (1) the repayment of benefits obtained due to the person's fraud, misrepresentation, or willful nondisclosure, or (2) the recovery of amounts owed for committing unemployment insurance fraud, the Administrator may, in addition to any other manner of executing the judgment provided by law require, upon notice, each current or subsequent employer of the person to withhold income from the person's wages and pay it over to the Division. The Administrator shall notify a person who is subject to the withholding of income that his or her income is being withheld. Provides that in addition to other methods used to recover overpayments, if the overpayment is due to fraud, misrepresentation, or willful nondisclosure, the Administrator may recover any amounts due by requiring, upon notice, each current or subsequent employer of the person to withhold income from the person's wages and pay it over to the Division.

Provides that, except as otherwise provided in subsection 3 of NRS 612.480 (prohibiting a redetermination if an appeals tribunal has rendered a decision on the determination), an initial determination finding that a person has committed unemployment insurance fraud may be made

at any time within 4 years after the first day of the benefit year in which the person committed the unemployment insurance fraud.

Provides that, in addition to the repayment of benefits, a penalty equal to 15 percent of the total amount of fraudulent benefits received by the person shall be imposed. Additional penalties on fraudulent benefits may be imposed as follows. A penalty equal to not more than:

- 5 percent if the amount of such benefits is greater than \$25 but not greater than \$1,000;
- 10 percent (previously 25 percent) if the amount of such benefits is greater than \$1,000 but not greater than \$2,500; or
- 35 percent (previously 50 percent) of the total amount of fraudulent benefits received by the person in violation of the provisions concerning fraud or any other provision of the unemployment compensation law if the amount of such benefits is greater than \$2,500.

NEW HAMPSHIRE

HB 361
(CH 210)

ENACTED July 10, 2013
EFFECTIVE September 8, 2013

Extensions and Special Programs

Amends several of the criteria for approval of a worksharing plan as follows:

- The plan provides that health benefits and retirement benefits under a defined benefit plan or contributions under a defined contribution plan shall continue to be provided to employees participating in the worksharing program under the same terms and conditions as employees not participating in the program. (Previous law tied contributions to a defined benefit plan and defined contribution plan to the number of hours worked by employees in affected units.)
- The plan describes the manner in which the requirements of the plan will be implemented (including a plan for giving notice, where feasible, to an employee whose work week is to be reduced) together with an estimate of the number of layoffs that would have occurred absent the ability to participate in the worksharing program. If advance notice of the implementation of worksharing plan is not feasible, the plan shall explain why it is not feasible.
- The plan certifies that its terms and implementation are consistent with employer obligations under applicable Federal and State laws.

Provides that if any worksharing provision is in conflict with Federal law, that provision shall be held invalid without affecting the remaining provisions.

NEW HAMPSHIRE Rule 8267

ADOPTED November 15, 2013
EFFECTIVE October 21, 2013

Financing

Provides that failure of the employer or employing unit, or the employer's authorized agent, to provide claimant information in a timely manner or adequately as required by the Department of Employment Security shall be deemed an irrevocable waiver of its right to be heard before the determination is made. Benefits charged to its account as a result of the determination shall remain so charged even though the claimant is held not to be entitled to unemployment compensation by reason of a later decision. (Expires April 21, 2014.)

NEW YORK

SB 2607
(CH 57)

ENACTED AND EFFECTIVE March 29, 2013,
or as noted

Administration

Adds the following severability clause: If any amendment contained in a clause, sentence, paragraph, section, or part of this Act shall be adjudged by the United States Department of Labor to violate requirements for maintaining benefit standards required of the State in order to be eligible for any financial benefit offered through Federal law or regulation including, but not limited to, the waiver of interest on advances or the waiver of obligations to repay such advances to the State unemployment insurance fund, such amendments shall be severed from this Act and shall not affect, impair, or invalidate the remainder thereof.

Appeals

Provides that the Commissioner, Department of Labor, shall issue a determination for any protest that is filed by any base period employer within the time specified in the notification of potential charges based on voluntary separations or misconduct. An employer or claimant may request a hearing of such determination. (Applies to claims filed after January 1, 2014.)

Extensions and Special Programs

Provides that the work search provisions are not applicable to individuals participating in the self-employment assistance program. (Effective on and after April 11, 2013.)

Revises the shared work program provisions as follows (effective on and after April 11, 2013):

- Under an approved shared work program application, a claimant is not required to search for work if he or she is available for his or her usual hours of work with his or her employer that has been accepted to participate in the shared work program.
- Modifies the definition of "total unemployment" by adding that the work force subject to reduction shall consist of no less than two employees and by deleting that "full-time hours" shall mean at least 35 but not more than 40 hours per week, and shall not include overtime as defined in the Fair Labor Standards Act.
- Modifies the eligibility conditions provision by providing that a claimant shall be eligible for benefits if he or she works less than his or her normal hours (previously, full-time hours) in a week for his customary employer, and that employer has reduced or restricted the claimant's weekly hours of work, or has rehired a claimant previously laid off and reduced his or her weekly hours of work from those previously worked, as the result of a

plan by the employer to stabilize the work force by a program of sharing the work remaining after a reduction in total hours of work and a corresponding reduction in wages, provided the program requires not less than a 20 percent nor more than a 60 percent reduction in hours and wages among the work force.

- Modifies the provisions regarding qualified employers providing that an employer who has at least 2 (previously 5) full-time employees may apply to participate in a shared work program. The written application shall be made according to such forms and procedures as the Commissioner may specify and shall include such information as the Commissioner may require, including such other information that the United States Secretary of Labor determines to be appropriate for purposes of a shared work program. The Commissioner shall not approve such application unless the employer (1) certifies (previously, agrees) that, for the duration of the program, it will not eliminate or diminish health insurance, medical insurance, retirement benefits, or any other fringe benefits provided to employees immediately prior to the application unless such benefits provided to employees that do not participate in the shared work program are reduced or diminished to the same extent as those employees that participate in the shared work program; (2) certifies that the collective bargaining agent for the employees, if any, has agreed to participate in the program; (3) certifies that, if not for the shared work program to be initiated, the employer would reduce or would have reduced its work force to a degree equivalent to the total number of working hours proposed to be reduced or restricted for all included employees; (4) certifies that it will not hire additional part-time or full-time employees for the affected work force while the program is in operation; (5) agrees that no participant of the program shall receive, in the aggregate, more than 26 (previously, 20) weeks of benefits exclusive of the waiting week; (6) provides a description of how workers in the work force will be notified of the shared work program in advance of it taking effect, if feasible, and if such notice is not feasible, provides an explanation of why such notice is not feasible; (7) provides an estimate of the number of workers who would be laid off if the employer could not participate in the shared work program; and (8) certifies that the terms of the employer's written plan and implementation shall be consistent with employer obligations under applicable Federal and State laws.
- A claimant shall not be paid such benefits in excess of 26 (previously, 20) weeks during a benefit year.
- Eligible employees may participate, as appropriate, in training to enhance job skills if such program has been approved by the Commissioner. Such training may include employer-sponsored training or worker training funded under the Workforce Investment Act of 1998.

Financing

Increases the taxable wage base in 2014 from \$8,500 to \$10,300; in 2015 to \$10,500; in 2016 to \$10,700; in 2017 to \$10,900; in 2018 to \$11,100; in 2019 to \$11,400; in 2020 to \$11,600; in 2021 to \$11,800; in 2022 to \$12,000; in 2023 to \$12,300; in 2024 to \$12,500; in 2025 to \$12,800; in 2026 to \$13,000; and each year thereafter on January 1, the taxable wage base increases so that it exceeds 16 percent of the State's average annual wage; provided, however, such maximum amount shall be rounded up to the nearest \$100. Prohibits the reduction of the

State's average annual wage from the amount determined in the previous year. (Effective on and after January 1, 2014.)

Provides that an employer shall not be relieved of benefit charges if an employer or its agent fails to submit information resulting in an overpayment. (Applies to all overpayments established after October 1, 2013.)

Modifies the employer's rate of contribution chart under the positive employer's account percentage by deleting the words "but less than 10.75 percent" and everything else in the chart that follows. The last row under the positive employer's account percentage on the chart now reads 10.5 percent or more. (Effective on and after January 1, 2014.)

Provides that the collected civil penalty equal to the greater of \$100 or 15 percent of the total overpaid benefits determined to be fraudulent must be deposited in and credited to the Fund. (Applies to all overpayments established after October 1, 2013.)

Provides that, notwithstanding any provisions of the unemployment compensation law, unless a Commissioner's error is shown or the failure is the direct result of a declared disaster emergency, an employer's account shall not be relieved of charges resulting in an overpayment of benefits when the overpayment was made because the employer or the agent of the employer failed to timely or adequately respond to a request for information in the notice of potential charges or other such notice requesting claim information; however, the employer shall be relieved of charges the first time for failing to provide timely or adequate information for good cause. This prohibition for relief of charges shall apply to all employers including employers electing payment in lieu of contributions. (Applies to all overpayments established after October 1, 2013.)

Provides that the term "timely" shall mean a response is provided in the time period specified in the notice; the term "adequately" shall mean that the employer or its agent submitted information sufficient to render a correct determination.

Modifies the benefit charging provisions by adding: However, except for individuals employed by a participating employer on a seasonal, temporary, or intermittent basis, no benefits paid to a claimant shall be charged to an employer's account if the State is reimbursed by the United States pursuant to the Middle Class Tax Relief and Job Creation Act of 2012, P.L. 112-96. (Effective April 1, 2013, and expires and deemed repealed August 23, 2015.)

Increases the minimum hourly wage from \$7.15 to \$8.00 on and after December 31, 2013; to \$8.75 on and after December 31, 2014; to \$9.00 on and after December 31, 2015; or, if greater, such other wage established by Federal law.

Monetary Entitlement

Provides that a "valid original claim" is a claim filed by a claimant who meets, among other qualifications, the following qualification: has been paid remuneration by contributing and reimbursable employers, other than employers from whom the claimant lost employment for

which a determination was made disqualifying the claimant for misconduct, for employment during at least 2 calendar quarters of the base period, with remuneration of 1-1/2 times the high calendar quarter remuneration (previously, earnings) within the base period, and with at least 221 times the minimum wage rounded down to the nearest \$100 of such remuneration being paid during the high calendar quarter of such base period (previously, with at least \$1,600 of such remuneration being paid during the high calendar quarter of such base period). (Applies to claims filed after January 1, 2014.)

Provides that an individual who has filed a previous valid original claim must have worked in employment and been paid remuneration for such work since the beginning of such previous claim in an amount equal to at least 10 times (previously, 5 times) the claimant's weekly benefit rate in order to be able to file a subsequent valid original claim. (Applies to claims filed after January 1, 2014.)

Provides that the "average annual wage" shall be the average annual wage of the State of New York for the previous calendar year no later than May 31 of each year. (Effective on and after January 1, 2014.)

Provides that the "average weekly wage" shall be the average weekly wage of the State of New York for the previous calendar year no later than May 31 of each year. (Effective on and after January 1, 2014.)

Changes the calculation of the weekly benefit amount as follows. A claimant's weekly benefit amount shall be 1/26 of the remuneration paid during the highest calendar quarter of the base period, provided the claimant has remuneration paid in all 4 calendar quarters during his or her base period or alternate base period. However, for any claimant who has remuneration paid in all 4 calendar quarters during his or her base period or alternate base period and whose high calendar quarter remuneration during the base period is \$3,575 or less, the weekly benefit amount shall be 1/25 of the remuneration paid during the highest calendar quarter of the base period. A claimant's weekly benefit amount shall be 1/26 of the average remuneration paid in the 2 highest quarters paid during the base period or alternate base period when the claimant has remuneration paid in 2 or 3 calendar quarters, provided however, that a claimant whose high calendar quarter is \$4,000 or less but greater than \$3,575 shall have a weekly benefit amount of 1/26 of such high calendar quarter. However, for any claimant who has remuneration paid in 2 or 3 calendar quarters during his or her base period or alternate base period and whose high calendar quarter remuneration during the base period is \$3,575 or less, the weekly benefit amount shall be 1/25 of the remuneration paid during the highest calendar quarter of the base period. Any claimant whose high calendar quarter remuneration during the base period is more than \$3,575 shall not have a weekly benefit amount less than \$143. The weekly benefit amount, so computed, that is not a multiple of \$1.00 shall be lowered to the next multiple of \$1.00. On and after the first Monday of October 2014, the weekly benefit amount shall not be less than \$100, nor shall it exceed \$420 until the first Monday of October 2015, when the maximum weekly benefit amount shall be \$425; until the first Monday of October 2016, when the maximum weekly benefit amount shall be \$430; until the first Monday of October 2017, when the maximum weekly benefit amount shall be \$435; until the first Monday of October 2018, when the maximum weekly benefit amount shall be \$450; until the first Monday of October

2019, when the maximum weekly benefit amount shall be 36 percent of the average weekly wage; until the first Monday of October 2020, when the maximum weekly benefit amount shall be 38 percent of the average weekly wage; until the first Monday of October 2021, when the maximum weekly benefit amount shall be 40 percent of the average weekly wage; until the first Monday of October 2022, when the maximum weekly benefit amount shall be 42 percent of the average weekly wage; until the first Monday of October 2023, when the maximum weekly benefit amount shall be 44 percent of the average weekly wage; until the first Monday of October 2024, when the maximum weekly benefit amount shall be 46 percent of the average weekly wage; until the first Monday of October 2025, when the maximum weekly benefit amount shall be 48 percent of the average weekly wage; until the first Monday of October 2026, and each year thereafter on the first Monday of October when the maximum weekly benefit amount shall be 50 percent of the average weekly wage provided, however, that in no event shall the maximum weekly benefit amount be reduced from the previous year. (Previously, the weekly benefit amount was 1/26 times the high quarter wages, unless the high quarter wages were equal to or less than \$3,575, then the weekly benefit amount was 1/25 times the high quarter wages.) (Effective on and after January 1, 2014.)

Provides that notwithstanding the foregoing, the maximum weekly benefit amount shall not be increased in accordance with the above schedule in any year in which the State has had a decrease in private sector jobs in each month of the first 2 calendar quarters of the year in which the maximum weekly benefit amount increase is scheduled to occur. If the State has not had a decrease in private sector jobs in each month in the first 2 calendar quarters in years subsequent to such suspension of an increase in the maximum weekly benefit amount, then the maximum weekly benefit amount shall increase to the amount for the year previously scheduled to be established had the increase not been suspended, and increased annually thereafter in accordance with the schedule. In no case shall such suspension result in a reduction of the maximum weekly benefit amount to less than the amount provided in the most recent year. (Effective on and after January 1, 2014.)

Provides that, notwithstanding the foregoing, the maximum weekly benefit amount shall not be increased in accordance with the above schedule in any year in which the balance of the fund on May 31 of the same year is less than an amount of the funds projected to be needed to pay for the increase in benefits. If fund revenues are sufficient to pay for the increase in benefits in years subsequent to such suspension of an increase in the maximum weekly benefit amount, then the maximum weekly benefit amount shall increase to the amount for the year previously scheduled to be established had the increase not been suspended, and increased annually thereafter in accordance with the above schedule. In no case shall such suspension result in a reduction of the maximum weekly benefit amount to less than the amount provided in the most recent year. (Effective on and after January 1, 2017.)

Provides that, notwithstanding the foregoing, the maximum weekly benefit amount shall not be increased in accordance with the above schedule in any year in which the balance of the fund has not reached or exceeded 30 percent of the average high cost multiple, as the standard for receipt of interest-free Federal loans, on at least one day between April 1 and June 30 of the same calendar year as the increase shall take effect. If, following such suspension of an increase in the maximum benefit amount, the Commissioner shall determine on at least one day between April 1

and June 30 that the balance of the fund is greater than such 30 percent average high cost multiple, then the maximum weekly benefit amount shall increase to the percentage for the year previously scheduled to be established had the increase not been suspended, and increased annually thereafter in accordance with the above schedule. In no case shall such suspension result in a reduction of the maximum weekly benefit amount to less than the amount provided in the most recent year. (Effective on and after January 1, 2019.)

Nonmonetary Eligibility

Provides that an alien who is not eligible under 8 USC 1621(a) shall be eligible for benefits, provided such alien is eligible for benefits under the provisions of the State's unemployment compensation law and Section 3304(a)(14) of the Federal Unemployment Tax Act.

Provides that, among other things, no benefits shall be payable to any claimant who is not actively seeking work. In order to be actively seeking work a claimant must be engaged in systematic and sustained efforts to find work. The Commissioner shall promulgate regulations defining systematic and sustained efforts to find work, and setting standards for the proof of work search efforts. (Effective January 1, 2014.)

Provides that no benefits shall be payable to a claimant for any week during a dismissal period for which a claimant receives dismissal pay, nor shall any day within such week be considered a day of total unemployment if such weekly dismissal pay exceeds the maximum weekly benefit rate. (Applies to claims filed on and after January 1, 2014.)

Provides that the term "dismissal pay" means one or more payments made by an employer to an employee due to his or her separation from service with the employer regardless of whether the employer is legally bound by contract, statute, or otherwise to make such payments. The term does not include payments for pension, retirement, accrued leave, and health insurance, or payments for supplemental unemployment benefits.

Provides that the term "dismissal period" means the time designated for weeks of dismissal pay attributable to the claimant's weekly earnings in accordance with the collective bargaining agreement, employment contract, employer's dismissal policy, dismissal agreement with the employer, or other such agreement. If no such agreement, contract, or policy designates a dismissal period, then the dismissal period shall be the time designated in writing in advance by the employer to be considered the dismissal period. If no time period is designated, the dismissal period shall commence on the day after the claimant's last day of employment. If the dismissal payment is in a lump sum amount or for an indefinite period, dismissal payments shall be allocated on a weekly basis from the day after the claimant's last day of employment, and the claimant shall not be eligible for benefits for any week for which it is determined that the claimant receives dismissal pay. The amount of dismissal pay shall be allocated based on the claimant's actual weekly remuneration paid by the employer during his or her employment or, if such amount cannot be determined, the amount of the claimant's average weekly wage for the highest calendar quarter.

Provides that, notwithstanding the foregoing, the dismissal provisions shall not apply during any weeks in which the initial payment of dismissal pay is made more than 30 days from the last day of the claimant's employment.

Provides that, to requalify for benefits after a disqualification due to a voluntary separation or to a disqualification due to misconduct, a claimant must subsequently work in employment and earn remuneration at least equal to 10 (previously, 5) times his or her weekly benefit. (Applies to claims filed on and after January 1, 2014.)

Provides that, to requalify for benefits after a disqualification for refusing to accept an offer of suitable work, a claimant must subsequently work in employment and earn remuneration at least equal to 10 (previously, 5) times his or her weekly benefit. Except that claimants who are not subject to a recall date or who do not obtain employment through a union hiring hall and who are still unemployed after receiving 10 (previously, 13) weeks of benefits shall be required to accept any employment proffered that such claimants are capable of performing, provided that such employment would result in a wage not less than 80 percent of such claimant's high calendar quarter wages received in the base period, and not substantially less than the prevailing wage for similar work in the locality. (Applies to claims filed on and after January 1, 2014.)

Revises the provisions regarding the effect of retirement payments on the claimant's benefit amount by deleting and amending some of the provisions concerning the reduction of the benefit rate, the application, the amount of reduction, the reduction equal to the benefit rate, the reduction not established, the limitation, and the alternative condition. The provisions regarding the effect of retirement payments provide that:

- The benefit rate of a claimant who is receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on his previous work, shall be reduced as hereinafter provided, if such payment is made under a plan maintained or contributed to by his base period employer and, except for payments made under the Social Security Act or the Railroad Retirement Act of 1974, the claimant's employment with, or remuneration from, such employer after the beginning of the base period affected his eligibility for, or increased the amount of, such pension, retirement or retired pay, annuity, or other similar periodic payment.
- The claimant's benefit rate shall be reduced by the largest number of whole dollars that is not more than the pro-rated weekly amount of such payment. If the claimant was the sole contributor for the pension, retirement or retired pay, annuity, or other similar periodic payment, no reduction shall apply.
- If, at the time benefits are payable, it has not been established that the claimant will be receiving such pension, retirement or retired pay, annuity, or other payment, benefits due shall be paid without a reduction, subject to review within the period and under the conditions as provided in the unemployment compensation law with respect to retroactive payment of remuneration.
- The terms "pension or retirement payment" and "governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on previous work" shall not include payments made from a qualified trust to an eligible retirement plan under the terms and conditions specified in Section 402 of the Internal

Revenue Code for Federal income tax purposes, such payments commonly known as eligible rollover distributions. (Applies to claims filed on and after January 1, 2014.)

Overpayments

Provides that the imposed penalty that requires a claimant to forfeit benefits for at least the first 4 to 80 effective days following discovery of fraud shall no longer apply after the expiration of 2 years from the date of the final determination (previously, 2 years from the date on which the fraudulent offense was committed). Such 2-year period shall be tolled during the time period a claimant has an appeal pending. (Applies to all overpayments established after October 1, 2013.)

Requires a claimant to pay a civil penalty equal to the greater of \$100 or 15 percent of the total overpaid benefits determined to be fraudulent. The penalties assessed shall apply and be assessed for any benefits paid under Federal unemployment and extended unemployment programs. The penalties imposed due to fraud shall be in addition to any penalties imposed under the State's unemployment compensation law, or any State, or Federal criminal statute. No penalties or interest assessed due to fraud may be deducted or withheld from benefits. (Applies to all overpayments established after October 1, 2013.)

Provides that the Commissioner may recover fraudulent amounts due by commencing a civil action or, when certain conditions are met, by filing the final determination or final decision with the county clerk of the county where the claimant resides. (Applies to all overpayments established after October 1, 2013.)

Provides that, notwithstanding the provisions of Section 595, any overpayments shall be deducted and withheld under the State's unemployment compensation law, or under any state or Federal unemployment compensation program from benefits payable to an individual. No penalties or interest assessed may be deducted or withheld from benefits. (Applies to all overpayments established after October 1, 2013.)

NORTH CAROLINA

HB 4
(CH 2)

ENACTED February 19, 2013
EFFECTIVE July 1, 2013

Administration

Defines "Department" as the North Carolina Department of Commerce.

Establishes a Joint Legislative Oversight Committee on Unemployment Insurance to study and review the State's unemployment insurance laws, to monitor the payment of the debt owed by the Unemployment Trust Fund to the Federal Government, and to review and determine the adequacy of the balances in the Unemployment Trust Fund and the Unemployment Insurance Reserve Fund. (Expires July 1, 2023.)

Appeals

Provides that the Board of Review shall exercise its decision-making processes independent of the Governor, the General Assembly, the Department, and the Division.

Extensions and Special Programs

Provides that extended benefits payable shall be paid as required under the Federal-State Extended Unemployment Compensation Act of 1970. Extended benefits payable are not required under Federal law, and may be paid only if the Federal government funds 100 percent of the costs of providing them.

Financing

Changes the Employment Security Administration Fund from a special fund to a special revenue fund.

Renames the Special Employment Security Administration Fund as the Supplemental Employment Security Administration Fund (a special revenue fund).

Changes the Unemployment Insurance Fund from a special fund to an enterprise fund. No money in this fund may be used, directly or indirectly, to pay interest on an advance received from the Unemployment Trust Fund. In addition to consisting of other sources of revenue, this fund shall also consist of amounts transferred from the Unemployment Insurance Reserve Fund.

Renames the Employment Security Commission Reserve Fund (a special trust fund) as the Unemployment Insurance Reserve Fund (a special revenue fund). The balance in this fund on January 1 of any year may not exceed the greater of \$50 million or the amount of interest paid the previous September on Title XII advances. Any amount in the fund that exceeds the cap must be transferred to the Unemployment Insurance Fund.

Provides that an employer is required to make a contribution in each calendar year in an amount equal to the applicable percentage of the taxable wages the employer pays its employees during the year for services performed in this State. The applicable percentage for an employer is considered the employer's contribution rate and is determined by the employer's base rate and the balance in the Unemployment Insurance Fund as of the August 1 computation date. An employer's base rate is either the standard beginning rate or an experience rating. An employer's experience rating is computed as a reserve ratio. An employer's reserve ratio percentage (ERRP) is the employer's reserve ratio multiplied by 0.68. A positive ERRP produces a lower contribution rate, and a negative ERRP produces a higher contribution rate. (Applies to contributions payable for calendar quarters beginning on or after January 1, 2014.)

Provides that the contribution rate for an employer is determined in accordance with the table set out below and then rounded to the nearest 0.01 percent subject to the minimum and maximum contribution rates. The minimum contribution rate increases from 0.0 percent to 0.06 percent. The maximum contribution rate increases from 5.7 percent to 5.76 percent. "Total insured wages" are the total wages reported by all insured employers for the 12-month period ending on

July 31 preceding the computation date. (Applicable to claims for benefits filed on or after July 1, 2013.)

<u>Employer's Base Rate</u>	<u>UI Trust Fund Balance</u>	
	<u>as Percentage of Total</u>	<u>Contribution Rate</u>
	<u>Insured Wages</u>	
Standard Beginning Rate	All balances	1%
Experience Rating	Less than or equal to 1%	2.9% minus ERRP
	Greater than 1% but less	
	than or equal to 1.25%	2.4% minus ERRP
	Greater than 1.25%	1.9% minus ERRP

Provides that the balance of an employer's account must be determined on the computation date by subtracting the total amount of all benefits charged to the employer's account for all past periods from the total of all contributions and other amounts credited to the employer for those periods. If an employer failed to file a report or a report filed by an employer is incorrect or insufficient, the employer's account balance must be determined based upon the best information available, and the employer must be notified that this balance will be used to determine the employer's reserve ratio unless the employer provides additional information within 15 days of the date of the notice.

Provides that an employer's reserve ratio must be determined, which is used to determine the employer's contribution rate. The employer's reserve ratio is the quotient obtained by dividing the employer's account balance on the computation date by the total taxable payroll of the employer for the 36 calendar month period ending June 30 preceding the computation date, expressed as a percentage.

Requires a governmental entity, a nonprofit organization, or Indian Tribe that elects to finance benefits by making reimbursable payments in lieu of contributions to maintain an account balance equal to 1.0 percent of its taxable wages. The balance is determined on the computation date. If there is a deficit in the account, the employer must be billed for the amount necessary to bring its account to 1.0 percent of its taxable wages for the preceding calendar year. Payment is due 30 days from the bill's mailing date. Amounts unpaid by the due date accrue interest and penalties. (Applicable to advance payments payable for calendar quarters beginning on or after July 1, 2013.)

Provides that the 20 percent surtax (previously, tax) imposed on an employer's contribution rate does not apply in a calendar year if, as of the preceding August 1 computation date, the amount in the State's account in the Unemployment Trust Fund equals or exceeds \$1 billion. Penalties collected on these unpaid surtaxes must be credited to the Civil Penalty and Forfeiture Fund. (Previously, penalties were credited to the Unemployment Insurance Reserve Fund.)

Provides that an employer's account may not be relieved of charges relating to benefits paid erroneously if both of the following apply:

(1) The erroneous payment was made because the employer, or the agent of the employer, was at fault for failing to respond timely or adequately to a written request for information relating to the claim for unemployment compensation. An erroneous payment is one that would not have been made but for the failure of the employer or the employer's agent to respond to the request for information related to that claim.

(2) The employer or agent has a pattern of failing to respond timely or adequately to requests for information relating to claims for unemployment compensation. In determining whether the employer or agent has a pattern of failing to respond timely or adequately, consideration must be given to the number of documented instances of that employer's or agent's failures to respond in relation to the total requests made to that employer or agent. An employer or agent may not be determined to have a pattern of failing to respond if the number of failures during the year prior to the request is less than 2 percent of the total requests made to that employer or agent.

The above charging provisions apply to erroneous payments established on or after October 21, 2013.

Monetary Entitlement

Defines "average weekly insured wage" as the weekly rate obtained by dividing the total wages reported by all insured employers for a calendar year by the average monthly number of individuals in insured employment during that year and then dividing that quotient by 52. (Under prior law, "average weekly insured wage" was defined as the quotient obtained by dividing the total wages reported by all insured employers by the monthly average in insured employment during the immediate preceding calendar year and then dividing that quotient by 52 to obtain a weekly rate.) (Applicable to claims for benefits filed on or after July 1, 2013.)

Deletes the language that provides an individual shall be deemed to be unemployed if the individual has payroll attachment but, because of lack of work during the payroll week for which the individual is requesting the establishment of a benefit year, the individual worked less than the equivalent of 3 customary scheduled full-time days in the establishment, plant, or industry in which the individual has payroll attachment as a regular employee.

Provides that the beginning of the benefit year for an individual that has payroll attachment is the Sunday preceding the payroll week ending date if a benefit year is established.

Provides that if an individual is not payroll attached, the benefit year begins on the Sunday of the calendar week with respect to which the individual filed a valid claim for benefits and registered for work. (Previously, if an individual is not payroll attached, the benefit year begins on the Sunday of the calendar week with respect to which the individual met the reporting requirements provided by regulation.) (Applicable to claims for benefits filed on or after July 1, 2013.)

Changes the eligibility requirements needed to establish a second benefit year as follows. In employment, the individual must have been paid wages in at least 2 base period quarters; in wages, the individual must have been paid wages totaling at least 6 times the average weekly insured wage during the base period. The alternative base period may not be used in establishing a claim for benefits in the next benefit year. (Previously, to establish a second benefit year,

wages in insured work equal to 10 times the WBA were required.) (Applicable to claims for benefits filed on or after July 1, 2013.)

Changes the calculation of the weekly benefit amount as follows. The weekly benefit amount for an individual who is totally unemployed is an amount equal to the wages paid to the individual in the last 2 completed base period quarters divided by 52 and rounded to the next lower whole dollar. If this amount is less than \$15, the individual is not eligible for benefits. The weekly benefit amount may not exceed \$350. (Previously, the calculation of the weekly benefit amount was the base period high quarter wages divided by 26, and the maximum weekly benefit amount was \$535.) (Applicable to claims for benefits filed on or after July 1, 2013.)

Changes the calculation of a partial weekly benefit amount as follows. The weekly benefit amount for an individual who is partially unemployed or part-totally employed is the amount the individual would receive under the above paragraph for a totally unemployed individual, reduced by the amount of any wages the individual receives in the benefit week in excess of 20 percent of the benefit amount applicable to total unemployment. If the amount so calculated is not a whole dollar, the amount must be rounded to the next lower whole dollar. Payments received by an individual under a supplemental benefit plan do not affect the computation of the individual's partial weekly benefit. (Applicable to claims for benefits filed on or after July 1, 2013.)

Changes the calculation of the minimum and maximum durations of benefits as follows. The minimum and maximum number of weeks an individual is allowed to receive unemployment benefits depends on the seasonal adjusted statewide unemployment rate that applies to the 6-month base period in which the claim is filed. One 6-month base period begins on January 1 and one 6-month base period begins on July 1. For the base period that begins January 1, the seasonal adjusted unemployment rate for the State for the preceding month of October applies. For the base period that begins July 1, the seasonal adjusted unemployment rate for the State for the preceding month of April applies. The Division must use the most recent seasonal adjusted unemployment rate determined by the U.S. Department of Labor, Bureau of Labor Statistics, and not the rate as revised in the annual benchmark. The number of weeks allowed for an individual is determined as follows. If the seasonal adjusted unemployment rate is less than or equal to 5.5 percent, the minimum number of weeks is 5 and the maximum number of weeks is 12; if the seasonal adjusted unemployment rate is greater than 5.5 percent up to 6.0 percent, the minimum number of weeks is 6 and the maximum number of weeks is 13; if the seasonal adjusted unemployment rate is greater than 6.0 percent up to 6.5 percent, the minimum number of weeks is 7 and the maximum number of weeks is 14; if the seasonal adjusted unemployment rate is greater than 6.5 percent up to 7.0 percent, the minimum number of weeks is 8 and the maximum number of weeks is 15; if the seasonal adjusted unemployment rate is greater than 7.0 percent up to 7.5 percent, the minimum number of weeks is 9 and the maximum number of weeks is 16; if the seasonal adjusted unemployment rate is greater than 7.5 percent up to 8.0 percent, the minimum number of weeks is 10 and the maximum number of weeks is 17; if the seasonal adjusted unemployment rate is greater than 8.0 percent up to 8.5 percent, the minimum number of weeks is 11 and the maximum number of weeks is 18; if the seasonal adjusted unemployment rate is greater than 8.5 percent up to 9.0 percent, the minimum number of weeks is 12 and the maximum number of weeks is 19; and if the seasonal adjusted unemployment rate is greater than 9.0 percent, the minimum number of weeks is 13 and the

maximum number of weeks is 20. (Applicable to claims for benefits filed on or after July 1, 2013.)

Provides that the total amount of benefits paid to an individual may not exceed the individual's total benefit amount. The total benefit amount for an individual is determined as follows:

- (1) Divide the individual's base-period wages by the average of the wages paid to the individual in the last two completed quarters of the base period.
- (2) Multiply the quotient by $8\frac{2}{3}$.
- (3) Round the product to the nearest whole number.
- (4) Multiply the resulting amount by the individual's weekly benefit amount.

(Applicable to claims for benefits filed on or after July 1, 2013.)

Provides that the number of weeks an individual may receive benefits varies depending on the seasonal adjusted statewide unemployment rate that applies at the time the regular unemployment claim is filed. The total benefits paid to an individual may not be less than the individual's average weekly benefit amount multiplied by the minimum number of weeks allowed. The total benefits paid to an individual may not exceed the lesser of the following:

- (1) The individual's average weekly benefit amount multiplied by the maximum number of weeks allowed.
- (2) The individual's calculated total benefit amount.

(Applicable to claims for benefits filed on or after July 1, 2013.)

Nonmonetary Eligibility

Provides that when an individual leaves work due solely to a unilateral and permanent reduction in work hours of more than 50 percent (previously, 20 percent) of the customary scheduled full-time work hours in the establishment, plant, or industry in which the individual was employed, the leaving is presumed to be good cause attributable to the employer. The employer may rebut the presumption if the reduction is temporary or was occasioned by malfeasance, misfeasance, or nonfeasance on the part of the individual.

Expands the definition of misconduct connected with the work to include the following:

- Termination or suspension from employment after arrest or conviction for an offense involving violence, sex crimes, or illegal drugs if the offense is related to or connected with the employee's work for an employer or is in violation of a reasonable work rule or policy.
- Any physical violence whatsoever related to the employee's work for an employer, including physical violence directed at supervisors, subordinates, coworkers, vendors, customers, or the general public.
- Inappropriate comments or behavior toward supervisors, subordinates, coworkers, vendors, customers, or to the general public relating to any federally protected characteristic that creates a hostile work environment.
- Theft in connection with the employment.

- Forging or falsifying any document or data related to employment, including a previously submitted application for employment.
- Violation of an employer's written absenteeism policy.
- Refusal to perform reasonably assigned work tasks or failure to adequately perform employment duties as evidenced by no fewer than three written reprimands in the 12 months immediately preceding the employee's termination.

Provides that an individual is not available for work if the individual is:

- Incarcerated or has received notice to report to or is otherwise detained in a State or Federal jail or penal institution. This does not apply to an individual who is incarcerated solely on a weekend in a county jail and who is otherwise available for work, or
- On disciplinary suspension for more than 30 days based on acts or omissions that constitute fault on the part of the employee and are connected with the work.

Provides that the determination of whether an individual is actively seeking work is based upon the following:

- (1) The individual is registered for employment services.
- (2) The individual has engaged in an active search for employment that is appropriate in light of the employment available in the labor market and the individual's skills and capabilities.
- (3) The individual has sought work on at least 2 different days during the week and made at least 2 job contacts with potential employers (previously, at least 2 in-person job contacts.)
- (4) The individual has maintained a record of the individual's work search efforts. The record must include the potential employers contacted, the method of contact, and the date contacted. The individual must provide the record to the Division upon request.

Provides that the determination of whether an employment offer is suitable must vary based upon the individual's length of unemployment as follows:

- (1) During the first 10 weeks of a benefit period, the Division may consider all of the following:
 - a. The degree of risk involved to the individual's health, safety, and morals.
 - b. The individual's physical fitness, and prior training and experience.
 - c. The individual's prospects for securing local work in the individual's customary occupation.
 - d. The distance of the available work from the individual's residence.
 - e. The individual's prior earnings.
- (2) During the remaining weeks of a benefit period, the Division must consider any employment offer paying 120 percent of the individual's weekly benefit amount to be suitable work.

Provides that an individual who is partially unemployed and for whom the employer has filed an attached claim for benefits has satisfied the work search requirements for any given week in the benefit period associated with the attached claim if the individual is available for work with the employer that filed the attached claim.

Provides that in addition to other things, an individual has satisfied the work search requirements for any given week if, for that week, one or more of the following applies:

- (1) The individual is participating in the Trade Jobs for Success initiative.
- (2) The individual is participating in reemployment services and is actively seeking work in a manner consistent with the planned reemployment services.

Provides that the disciplinary suspension of an employee for 30 or fewer (previously, 10 or fewer) consecutive calendar days does not constitute good cause for leaving work. An individual who is on suspension is not available for work and is not eligible for benefits for any week during any part of the disciplinary suspension. If the disciplinary suspension exceeds 30 days, the individual is considered to have been discharged from work because of the acts or omissions that caused the suspension and the issue is whether the discharge was for disqualifying reasons. During the period of suspension up to 30 days, the individual is considered to be attached to the employer's payroll, and the issue of separation from work is held in abeyance until a claim is filed for a week to which this section does not apply.

Provides that an individual is disqualified for benefits if the employer was a limited liability company and the individual was a member.

Provides that, with respect to limitation on company officers and spouses, the maximum number of weeks an individual or an individual's spouse may receive benefits is limited to the lesser of 6 weeks or the applicable weeks determined under G.S. 96-14.4.

Provides that, with respect to partial unemployment, the period of partial unemployment for which the claim is filed may not exceed 6 weeks. To file an attached claim, an employer must pay an amount equal to the full cost of unemployment benefits payable to the employee under the attached claim at the time the attached claim is filed. The amounts paid must be credited to the Unemployment Insurance Fund. An employer may file an attached claim only if the employer has a positive credit balance in its account. If an employer does not have a positive credit balance in its account, the employer must remit an amount equal to the amount necessary to bring the employer's negative credit balance to at least zero at the time the employer files the attached claim.

Provides that, with respect to separation payments, if the remuneration is given in a lump sum, the amount must be allocated on a weekly basis as if it had been earned by the individual during a week of employment. Expands separation payments to include severance pay.

Provides that an individual that performs service in a school as a substitute is not unemployed for days or weeks when the individual is not called to work unless the individual was employed as a full-time substitute during the period of time for which the individual is requesting benefits. A

full-time substitute is an employee that works for more than 30 hours a week for the school on a continual basis for a period of 6 months or more.

Overpayments

Provides that intangible property that belongs to an individual, is owed to an individual, or has been transferred by an individual under circumstances that would permit it to be levied upon if it were tangible property is subject to attachment and garnishment in payment of a fraudulent overpayment that is due from the individual and is collectible. Intangible personal property includes bank deposits, rent, salaries, wages, property held in the Escheat Fund, and any other property incapable of manual levy or delivery. A person who is in possession of intangible property that is subject to attachment and garnishment is the garnishee and is liable for the amount the individual owes. The liability applies only to the amount of the individual's property in the garnishee's possession reduced by any amount the individual owes the garnishee.

Provides that the Secretary may submit to a financial institution information that identifies an individual who owes a fraudulent overpayment that is collectible and the amount of the overpayment. The Secretary may submit the information on a quarterly basis or, with the agreement of the financial institution, on a more frequent basis. A financial institution that receives the information must determine the amount, if any, of intangible property it holds that belongs to the individual and must inform the Secretary of its determination. The Secretary must reimburse a financial institution for its costs in providing the information, not to exceed the amount payable to the financial institution for providing information for use in locating a noncustodial parent.

Provides that no more than 10 percent of an individual's wages or salary is subject to attachment and garnishment. The wages or salary of an employee of the United States, the State, or a political subdivision of the State are subject to attachment and garnishment.

Provides that before the Secretary attaches and garnishes intangible property in payment of a fraudulent overpayment, the Secretary must send the garnishee a notice of garnishment. If the Department does not agree with the garnishee on the garnishee's liability, the Department may proceed to enforce the garnishees' liability for the fraudulent overpayment of unemployment benefits by civil action.

Provides that the amount of overpayments due to fraudulent nondisclosure or misrepresentation shall be deducted from future benefits payable, and the deducted amount may be up to 100 percent of that person's weekly benefit amount.

Provides that the amount of overpayments due to nonfraudulent reasons shall be deducted from future benefits payable, but the amount deducted for any week shall be reduced by no more than 50 percent of that person's weekly benefit amount.

NORTH CAROLINA

HB 743
(CH 224)

ENACTED June 27, 2013
EFFECTIVE December 29, 2013

Administration

Provides that, effective for claims filed on or after June 30, 2013, an employer may file an attached claim for an employee for partial unemployment once during the benefit year (previously, calendar year).

Appeals

Provides that the period for an employer to file a protest to a claim for benefits is 14 days from the mailing or delivery of the notice, whichever occurs first (previously, 10 days from the delivery) and requires the protest to include a basis for the protest and a supporting statement of facts. The protest may not be amended after the 14-day period has expired, and benefits shall not be paid until the 14-day period has expired or a determination has been made.

Financing

Provides that penalties on unpaid taxes or surtaxes must be transferred to the Civil Penalty and Forfeiture Fund.

Provides that a reimbursing employer's required account balance will be calculated based on the immediate 4 quarters preceding July 1 (previously, the preceding calendar year), and that any excess of the 1 percent shall be retained in the employer's account as a credit.

Provides that an employer may not be determined to have a pattern of failing to respond if the number of failures during the year prior to the request are fewer than 2 or less than 2 percent, whichever is greater (previously, less than 2 percent).

Monetary Entitlement

Changes the calculation for duration of benefits from the average seasonal adjusted unemployment rate for the preceding month to the average of the months of July, August, and September for the 6-month base period beginning January 1 and the average of the months of January, February, and March for the 6-month base period beginning July 1.

Nonmonetary Eligibility

Provides that individuals providing services for an educational institution in any capacity other than instructional, research, or administrative are eligible for unemployment compensation benefits.

NORTH CAROLINA

SB 420
(CH 391)

ENACTED August 23, 2013
EFFECTIVE July 1, 2013, unless
otherwise noted

Administration

Provides that the Unemployment Insurance Fund is used solely for the payment of unemployment compensation, and for refunds of sums erroneously paid into the fund, exclusive of administrative expenses.

Coverage

For claims filed on or after June 30, 2013, provides that benefits are payable for service performed for a governmental entity, a nonprofit organization, and an Indian Tribe in the same amount, on the same terms, and subject to the same conditions as benefits payable on the basis of other service.

Provides that individuals are not eligible for unemployment compensation benefits to the maximum extent allowed under Federal law if service is provided by employees in any capacity for an educational institution or while in the employ of an educational service agency. (Applies to claims filed on or after June 30, 2013.)

Financing

Provides that all benefits paid to a seasonal worker shall be charged to the employer in accordance with State law. (Effective January 1, 2014.)

Nonmonetary Eligibility

Provides that an individual disqualified for benefits as a result of a separation may have the disqualification removed upon subsequent employment of more than 30 days, and the individual is otherwise eligible for benefits.

Provides that benefit reductions will not apply to social security retirement benefits.

Provides that individuals attending training approved by the State agency may not be denied benefits for any week related to availability for work, active search for work, or refusal to accept work.

Provides that an individual who refuses to return to work after a recall notice by the employer is disqualified for benefits.

OHIO HB 2
 (Session Law No. 33)

ENACTED July 11, 2013
EFFECTIVE October 11, 2013

Nonmonetary Eligibility

Requires an individual to register for work and continue to report to the employment office by phone, electronically, or be present for an in-person appointment. Provides that an individual has registered for work if he/she has completed any of the following activities: filed an application for benefit rights, made a weekly claim for benefits, or reopened an existing claim.

An individual's registration continues for 3 calendar weeks (including the week registered) and the Director may extend the period of registration for good cause.

Provides that the Director may waive the active work search requirement for an individual if: the employer has notified the Director that all or part the employer's plant is shut down for a purpose other than vacation or inventory; the employer and the individual make a joint request for the exemption; the shutdown is for a specific plant and period of time; the employee will return to work within 26 weeks from the date of notification; and the Director determines that the waiver will promote productivity and economic stability. The waiver will not apply to other requirements for the individual to be able and available for work.

Unless granted a waiver, requires an individual to register within 6 months with OhioMeansJobs, receive a weekly listing of available jobs, and keep a record of his/her search efforts as prescribed by the Director (effective 6 months after the effective date of this amendment). Registration includes the electronic creation, posting, and maintenance of a resume. The requirement does not apply to an individual who is legally prohibited from using a computer, has a physical or visual impairment that makes the individual unable to use a computer, or has a limited ability to read, write, speak, or understand a language available at OhioMeansJobs.

Provides that an individual who is a member in good standing with a labor organization that refers individuals to jobs meets the active work search requirement.

Provides that an individual is ineligible for benefits the week or weeks the individual was scheduled and failed, without good cause, to participate in reemployment services. Effective 6 months after the effective date of this amendment, requires individuals to report for reemployment services the eighth week after filing a valid claim for benefits. Participation in the reemployment and eligibility assessment program or other reemployment services is required unless the individual has completed similar services or justifiable cause exists. Reemployment services include job search assistance activities, skills assessments, and the provision of labor market statistics or analysis.

Provides that an individual who fails to comply with the requirements shall be ineligible for benefits the first day of the week that the individual fails to comply and remain ineligible until the last day of the week preceding the week that the individual satisfies the eligibility requirements.

OKLAHOMA

**SB 5
(CH 105)**

**ENACTED April 22, 2013
EFFECTIVE July 1, 2013**

Nonmonetary Eligibility

Expands the circumstances under which temporary employees would be deemed to have left work voluntarily without good cause. Provides that the temporary help firm shall establish the procedure for a temporary employee to communicate that his or her assignment has ended and that s/he is available for reassignment at any time. Provides that in addition to failure to contact

the temporary help firm for reassignment, a temporary employee shall be deemed to have left his or her last work voluntarily if s/he:

- Refuses a suitable job assignment without good cause;
- Communicates his or her decision to cease seeking assignment for any period of time;
- Becomes unavailable, without good cause, to accept a suitable job assignment; or
- Accepts employment with a client of the temporary help firm.

Provides that these provisions shall apply only if the temporary employee has been advised of his or her obligations and been provided a copy of a separate document written in clear and concise language stating these provisions, and that unemployment benefits may be denied for failure to comply.

PUERTO RICO HB 1359 ENACTED and EFFECTIVE October 18, 2013
(Act No. 120)

Financing

Requires the deposit of the 15 percent penalty of the amount of erroneous payment of unemployment benefits due to fraud in the State Unemployment Fund.

Provides that the person or organization shall not be entitled to a refund or credit of the amount erroneously paid as contribution, interest, or penalties for failing to timely or adequately respond to a request for information causing the erroneous payment, and for establishing a pattern of failing to timely and adequately respond to requests for information. Pattern of failing to timely and adequately respond means a previous failure to respond timely or adequately to one or more requests for information.

Nonmonetary Eligibility

Requires an individual to engage in an active search for employment to be eligible for benefits. An individual is engaged in actively searching for work if he/she has engaged in an active and diligent search for work during that week and provides satisfactory evidence of the work-seeking efforts made during that week, if requested.

Overpayments

Provides that benefits received due to fraud shall be recovered through deduction from future benefits payable in an amount equal to 100 percent of the weekly benefit amount as of the date on which an erroneous payment is determined. Other recovery methods may be deemed necessary to safeguard the solvency of the Fund.

Assesses a 15 percent penalty of the amount of erroneous payment of unemployment benefits made to an individual due to the individual's fraud. (Applicable to erroneous payments established after October 21, 2013.)

UTAH

**SB 281
(CH 473)**

**ENACTED April 1, 2013
EFFECTIVE May 14, 2013**

Administration

Requires the Unemployment Insurance Division (Division) to disclose to a creditor who has obtained judgment against a debtor the name and address of the debtor's last known employer if the judgment creditor:

- obtains a court order requiring disclosure of the information;
- enters into an agreement with the Division to obtain the information;
- pays the Division a reasonable fee that reflects the cost of providing the information; and
- complies with the safeguards and security measures described in 20 CFR Section 603.9.

Prohibits judgment creditors from using the information for a purpose other than satisfying the judgment between the creditor and the debtor, or from disclosing the information to any other person.

Permits the Division to audit a judgment creditor or any other party receiving information for compliance with the safeguards and security measures described in 20 CFR Section 603.9.

Imposes a civil penalty of no more than \$10,000, enforceable by the Utah Office of the Attorney General, on the judgment creditor or other party for failure to comply with the safeguards and security measures under 20 CFR Section 603.9. Entitles the Attorney General to an award for reasonable attorney fees, court costs, and investigative expenses, if s/he prevails in enforcing the civil penalty against the judgment creditor or other party. Provides that the civil penalty shall be deposited into the special administrative expense account.

**VERMONT HB 240
(Act No. 72)**

**ENACTED June 5, 2013
EFFECTIVE July 1, 2013**

Extensions and Special Programs

Amends the provisions of the Short-Time Compensation (STC) program as follows:

- Adds that "defined benefit plan" means a plan described in 26 U.S.C. Section 414(j), and "defined contribution plan" means a plan described in 26 U.S.C. Section 414(i).
- Redefines the term "short-time compensation plan" to mean a plan of an employer under which there is a reduction in the number of hours worked by employees of an affected unit rather than layoffs. The term "layoffs" for this purpose means the total separation of one or more workers in the affected unit. (Previous law defined "short-time compensation plan" to mean a plan of an employer under which there is a reduction in the number of hours worked by employees of an affected unit rather than temporary layoffs. The term "temporary layoffs" for this purpose meant the total separation of one or more

workers in the affected unit for an indefinite period expected to last for more than 2 months but not more than 6 months.)

- Changes some of the language defining “short-time compensation employer” to mean an employer with an experience rating record or an employer who makes payments in lieu of contributions to the unemployment compensation trust fund and that meets certain criteria including that the employer is not a negative balance employer. For this purpose, a negative balance employer is an employer who has for 3 or more consecutive calendar years immediately prior (previously, calendar years prior) to applying for the STC plan paid more in unemployment benefits to its employees than it has contributed to its unemployment insurance account.
- Redefines “usual weekly hours of work” to mean the normal hours of work for full-time or part-time employees in the affected unit when that unit is operating on its regular basis not to exceed 40 hours and not including hours of overtime work. (Previous law defined “usual weekly hours of work” to mean the normal hours of work for full-time and regular part-time employees in the affected unit when that unit is operating on its normally full-time basis not less than 30 hours and not to exceed 40 hours and not including overtime.)

Amends several of the criteria for the approval of an STC plan as follows:

- the plan provides that if the employer provides fringe benefits, including health benefits and retirement benefits under a defined benefit plan or contributions under a defined contribution plan, to any employee whose workweek is reduced under the program, that the benefits will continue to be provided to employees participating in the short-time compensation program under the same terms and conditions as though the workweek had not been reduced. However, reductions in the benefits of short-time compensation plan participants are permitted to the extent that the reductions also apply to nonparticipant employees. (Previously the criteria for plan approval required that the plan outline to the Commissioner the extent to which fringe benefits, including health insurance, of employees participating in the plan may be reduced, which shall be factored into the evaluation of the business plan for resolving the conditions that lead to the need for the STC plan.)
- the plan certifies that the aggregate reduction in work hours is in lieu of layoffs (previously, temporary total layoffs) of one or more workers which would have resulted in an equivalent reduction in work hours and which the Commissioner finds would have caused an equivalent dollar amount to be payable in unemployment compensation.
- the identified workweek reduction is applied consistently throughout the duration of the plan unless otherwise approved by the Department. The plan shall not subsidize seasonal employers during the off-season. (This criterion was amended by adding the last sentence.)

Adds the following criteria for approval of a work plan:

- the plan describes the manner in which the requirements of the plan will be implemented and, where feasible, how notice will be given to an employee whose workweek is to be reduced; provides an estimate of the number of layoffs that would have occurred absent the ability to participate in the short-time compensation program and any other information that the U.S. Secretary of Labor determines is appropriate; and
- the employer certifies that the plan is consistent with employer obligations under applicable State and Federal laws.

Provides that in the event of any conflict between any provision of law of regarding the STC definitions and the criteria for plan approval, or the regulations implemented pursuant to these provisions, and applicable Federal law, Federal law shall prevail and the provision shall be deemed invalid.

Deletes the following language concerning the criteria for approval of the plan: in addition, the Commissioner shall take into account any other factors which may be pertinent to the approval and proper implementation of the plan.

Provides that eligible employees may participate, as appropriate, in training, including employer-sponsored training or worker training funded under the Workforce Investment Act of 1998, to enhance job skills if the program has been approved by the Department.

VIRGINIA

SB 248
(CH 316)

ENACTED March 21, 2012
EFFECTIVE January 1, 2013

Financing

Allows all employers of domestic service employees who work in the private home of the employer to pay unemployment taxes and file reports annually. Previous law provided that only employers with a total payroll of \$5,000 or less in each calendar year, regardless of the number of persons providing such domestic service, could elect to pay unemployment taxes and file reports annually.

VIRGIN ISLANDS

SB 30-0242 ENACTED and EFFECTIVE December 6, 2013
(Act No. 7572)

Financing

Provides that an amount equal to 15 percent of each overpayment of unemployment insurance benefits due to claimant fraud will be transferred directly to the State Unemployment Trust Fund account upon recovery.

Provides that an employing unit's unemployment insurance account cannot be relieved of charges relating to an overpayment from the Unemployment Trust Fund if the overpayment was made because the employing unit or an agent of the employing unit was at fault for failing to

respond timely or adequately to a written or electronic request for information relating to the claim for unemployment compensation.

Overpayments

Provides that any person who makes a false statement or representation of a material fact knowing it to be false, or knowingly fails to disclose a material fact with intent to defraud by obtaining or increasing any benefit under the unemployment insurance law of this State, or under an unemployment security law of any State, the Federal government, or of a foreign government, either for himself or for any other person, shall be fined not less than \$50 nor more than either \$200 or an amount equal to 5 times the amount of unemployment insurance benefits obtained in such false or fraudulent manner. However, in no instance shall the fine assessed be less than 15 percent of the amount of unemployment insurance benefits due to claimant fraud. In addition to the fines, a criminal penalty of imprisonment maybe imposed for not longer than 60 days, and each such false statement, or representation, or failure to disclose a material fact shall constitute a separate offence. (Previously, the fine was not less than \$50 nor more than \$200, or imprisonment for not longer than 60 days.)

WASHINGTON SB 5355
 (CH 189)

ENACTED May 8, 2013
EFFECTIVE October 20, 2013

Administration

Adds the following severability clauses: If any part of this Act is found to be in conflict with Federal requirements that are a prescribed condition to the allocation of Federal funds to the State or the eligibility of employers in this State for Federal unemployment tax credits, the conflicting part of this Act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this Act. Rules adopted under this Act must meet Federal requirements that are a necessary condition to the receipt of Federal funds by the State or the granting of Federal unemployment tax credits to employers in this State. If any provision of this Act or its application to any person or circumstance is held invalid, the remainder of the Act or the application of the provision to other persons or circumstances is not affected.

Financing

Requires the deposit of the additional penalty of 15 percent assessed on overpayments obtained due to fraud into the State's unemployment compensation fund.

Provides than an employer's experience rating account may not be relieved of charges for a benefit payment, and an employer who reimburses the trust fund for benefit payments may not be credited for a benefit payment, if a benefit payment was made because the employer or employer's agent failed to respond timely or adequately to a written request for information relating to the claim or claims without establishing good cause for the failure, and the employer or employer's agent has a pattern of such failures. The Commissioner has the authority to determine whether the employer has good cause.

The term “adequately” means providing accurate information of sufficient quantity and quality that would allow a reasonable person to determine eligibility for benefits.

The term “pattern” means a benefit payment was made because the employer or employer’s agent failed to respond timely or adequately to a written request for information relating to a claim or claims without establishing good cause for the failure, if the greater of the following calculations for an employer is met: (a) at least 3 times in the previous 2 years; or (b) 20 percent of the total current claims against the employer.

Provides that if an employer’s agent is utilized, a pattern is established based on each individual client employer that the employer’s agent represents.

Overpayments

Provides that, with respect to determinations delivered or mailed on or after October 20, 2013, an individual is subject to an additional penalty of 15 percent of the amount of benefits overpaid or deemed overpaid due to fraud.

WISCONSIN

SB 200
(Act No. 36)

ENACTED July 5, 2013
EFFECTIVE July 7, 2013,
or as noted

Administration

Allows certain departments, boards, and divisions to disclose certain information including social security numbers to the Department of Workforce Development for the purpose of enforcing or administering collection responsibilities under unemployment insurance law and for the purpose of requesting certifications regarding liability for delinquent unemployment insurance contributions.

Increases the tardy filing fee for each delinquent quarterly wage report from \$50 to \$100, or \$20 per employee, whichever is greater, or if the report is filed within 30 days of its due date, the tardy filing fee remains \$50. (Applies to quarterly wage reports required to be filed for wages earned beginning in 2014.)

Provides that an application from a transferee requesting that it be deemed a successor must be received by the Department on or before the contribution payment due date for the first full quarter following the date of transfer, unless the transferee satisfies that the application was late as a result of excusable neglect. (Prior law did not contain an exception for excusable neglect.) A late application more than 90 days after its due date is not accepted. (Applies to transfers of businesses occurring after December 31, 2013.)

Allows the Department to do any of the following for the purpose of assisting claimants to find or obtain work: (1) use information or materials provided by a claimant to assess a claimant’s efforts, skills, and ability to find or obtain work, and to develop a list of potential opportunities

for a claimant to obtain suitable work; or (2) require a claimant to participate in a public employment office workshop or training program or in similar reemployment services. (Applies to weeks of unemployment beginning on or after July 7, 2013.)

Coverage

Deletes from the definition of “employer” limited liability companies consisting of the same members, and provides that multiple limited liability companies consisting of the same members are treated as separate employers under unemployment insurance law.

Provides that “covered employment” for an employer other than a government unit, an Indian tribe, or a nonprofit organization, except as the employer elects otherwise with the Department’s approval, does not include service performed by an inmate of a State prison or a Federal prison. (First applies to determinations and appeal decisions issued on January 5, 2014.)

Extensions and Special Programs

Repeals the extended training program provisions, which among other things provided for the payment of 26 weeks of training benefits to individuals separated from a declining occupation, who have exhausted all rights to regular unemployment compensation including extensions, and who are enrolled in and making satisfactory progress in an approved training program that prepares individuals for entry into a high-demand occupation; and provided that training benefits are not payable for weeks more than 52 weeks after the first week of regular benefits. (First applies to new claims for extended training benefits filed for the week beginning on December 22, 2013.)

Financing

Establishes a financial record matching program to identify the assets of debtors by matching records with financial institutions. The Department will enter into agreements with financial institutions doing business in the State that can participate by electing one of two matching options. In response to a quarterly contact by the Department, if a debtor has an ownership interest in an account, the financial institution will provide the Department with the debtor’s account information. A “debtor” in the financial matching program means a debtor whose debt has been finally determined, and is not subject to further appeal, and for whom with respect to a debt, a warrant has been issued. The meaning of “debt” has been amended to include an erroneous payment from the fund recovered under Section 108.245 that was not a result of a departmental error, including any payment to which the recipient is not entitled, from any transferee or other person that receives, possesses, or retains such a payment or from any account, including an account at any financial institution, resulting from the transfer, use, or disbursement of such a payment. (Effective January 1, 2014.)

Provides that if an employee qualifies to receive unemployment insurance benefits for any week using wages that were excluded because the employee’s license has been suspended, revoked, or not renewed due to the employee’s fault, any unemployment insurance benefits paid during a

benefit year are charged to the unemployment insurance fund's balancing account. (First applies to determinations and appeal decisions issued on January 5, 2014.)

Repeals the following provision: If a claimant is a prisoner of a state prison, and has employment with an employer other than the department of corrections or a private business leasing space within a State prison, and the claimant's employment terminates because conditions of incarceration or supervision make it impossible to continue the employment, the department shall charge to the fund's balancing account any benefits based on the terminated employment that are otherwise chargeable to the account of an employer that is subject to the contribution requirements. (First applies to determinations and appeal decisions issued on January 5, 2014.)

Provides that any erroneous payment recovered that was made to an unintended recipient without fault of the intended payee or payee's authorized agent shall be credited to the fund's balancing account. (First applies to determinations and appeal decisions issued on January 5, 2014.)

Provides that there shall be charged against the fund's balancing account any amount paid to correct an erroneous payment that has been made to an unintended recipient without fault of the intended payee or payee's authorized agent that is not recovered or recoverable. (First applies to determinations and appeal decisions issued on January 5, 2014.)

Allows the Department to waive or decrease interest charged on employers' delinquent payments or unpaid contributions in limited circumstances, as prescribed by rule.

Extends the expiration of the program integrity fund from January 1, 2014, to January 1, 2034.

Creates a process by which a license or credential issued by a State licensing department (or the Wisconsin Supreme Court, if it agrees) is denied, nonrenewed, discontinued, suspended, or revoked based on delinquent unemployment insurance contributions. Requires the Department to certify to the licensing department or the Supreme Court that the applicant or license holder is liable for delinquent contributions. In addition, the Department must promulgate rules that specify procedures to be used before it certifies to the licensing department or the Supreme Court that the applicant or license holder is liable for delinquent contributions.

Monetary Entitlement

Excludes from the definition of "base period wages" any payment made to or on behalf of an employee or his or her beneficiary under a cafeteria plan, if the payment would not be treated as wages without regard to that plan and if Federal law would not treat the payment as constructively received. (First applies to new claims filed on September 29, 2013.)

Increases the maximum weekly benefit amount from \$363 to \$370, increases the minimum high quarter wages required for the maximum weekly benefit amount from \$9,075 to \$9,250, and decreases the percentage of the average weekly wage for the minimum weekly benefit rate from 15 percent to 14.6 percent of the maximum rate and adjusted, if not a multiple of \$1, to the next lower multiple of \$1, on or after January 5, 2014.

Nonmonetary Eligibility

Amends the provisions relating to benefits for partial unemployment by providing that, except when otherwise authorized in an approved work-share program, a claimant is ineligible to receive any benefits for a week if the claimant receives or will receive from one or more employers wages earned for work performed in that week, amounts treated as wages that the claimant would have earned in certain circumstances for that week, sick pay, holiday pay, vacation pay, termination pay, bonus pay, back pay, or payments for a temporary total disability or a temporary partial disability, or any combination thereof, totaling more than \$500. (First applies to weeks of unemployment beginning on January 5, 2014.)

Provides that, if a claimant fails to initially comply with a request from the Department to provide information but later complies with the request within the 2 years following a determination about a claimant's eligibility for benefits, the claimant is eligible to receive benefits beginning with the week in which the failure occurred. (First applies to determinations and appeal decisions issued on January 5, 2014.) (Under prior law, if a claimant later complied with a request or satisfied the Department that he or she had good cause for failure to comply with the request, the claimant was eligible to receive benefits beginning with the week in which the failure occurred.)

Repeals the following provision: A claimant who does not provide information sufficient for the Department to determine whether the claimant has been discharged for misconduct connected with his or her employment, has voluntarily terminated his or her work, has failed without good cause to accept suitable work when offered, or has failed to return to work with a former employer that recalls the employee within 52 weeks after the employee last worked for that employer is not eligible to receive benefits for the week in which the discharge, termination or failure occurs or any subsequent week. If a claimant later provides the information and has good cause for the initial failure to provide the information, he or she is eligible to receive benefits as of the week in which the discharge, termination or failure occurred, if otherwise qualified. If a claimant later provides the information but does not have good cause for the initial failure to provide the information, he or she is eligible to receive benefits as of the week in which the information is provided, if otherwise qualified. (First applies to determinations and appeal decisions issued on January 5, 2014.)

Requires the claimant to inform the Department whether he or she is receiving social security disability insurance benefits when filing unemployment insurance claims. Provides that an individual who receives social security disability insurance benefits in a given week is ineligible for unemployment insurance benefits in that same week. (First applies to determinations and appeal decisions issued on January 5, 2014.)

Provides that if an employee fails, without good cause, to accept suitable work when offered, or fails, without good cause, to return to work with a former employer when recalled within 52 weeks after the employee last worked for that employer, the employee is ineligible to receive unemployment insurance benefits until wages are earned equal to at least 6 times the employee's weekly benefit rate. (First applies to determinations and appeal decisions issued on January 5,

2014.) (Under prior law, ineligibility was for 4 weeks and until the employee earned wages equal to at least 4 times the employee's weekly benefit rate.)

Provides that in addition to being ineligible for benefits for concealing wages earned or paid or payable, a claimant is also ineligible if he/she conceals hours worked in that week as follows. For each single act of concealment occurring: (1) before the date of the first determination of concealment an amount equal to 2 times the weekly benefit rate, (2) after the date of the first determination of concealment an amount equal to 4 times the weekly benefit rate, and (3) after the date of a 2nd or subsequent determination of concealment an amount equal to 8 times the weekly benefit rate. In addition to being ineligible for benefits resulting from concealment, the Department shall assess a penalty against the claimant equal to 15 percent of the benefit payments erroneously paid as a result of one or more acts of concealment. (First applies to weeks of unemployment beginning on July 7, 2013.)

Requires the Department to conduct random audits on claimants for benefits to assess compliance with the work search requirements. (Effective January 5, 2014.)

Overpayments

Allows the Department to waive recovery of benefits that were erroneously paid if the overpayment was the result of a departmental error. (Under prior law, the Department could waive recovery of benefits that were erroneously paid if the overpayment was the result of departmental error and was not the fault of any employer.) (First applies to determinations and appeal decisions issued on January 5, 2014.)

Provides that for any erroneous payment recovered that was made to an unintended recipient without fault of the intended payee or payee's authorized agent, the Department may issue the correct payment to the intended payee and recover the amount of the erroneous payment. (First applies to determinations and appeal decisions issued on January 5, 2014.)

Provides that with respect to erroneous payments, the fund's treasurer shall write off any non-recoverable payment made without fault on the part of the intended payee. (First applies to determinations and appeal decisions issued on January 5, 2014.)

Creates a procedure for the recovery of erroneous payments from the unemployment insurance fund. Allows the Department to commence an action to preserve and recover the proceeds of any erroneous payment from the fund not resulting from a departmental error, including any payment to which the recipient is not entitled, from any transferee or other person that receives, possesses, or retains such a payment or from any account, including an account at any financial institution, resulting from the transfer, use, or disbursement of such a payment. The Department may also commence an action to recover from a claimant the amount of any benefits that were erroneously paid to another person who was not entitled to receive the benefits because the claimant or the claimant's authorized agent divulged the claimant's security credentials to another person or failed to take adequate measures to protect the credentials from being divulged to an unauthorized person. (First applies to determinations and appeal decisions issued on January 5, 2014.)